

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 790 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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ASHABEN MOHANSINGH RAJPUT

Versus

STATE OF GUJARAT

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Appearance:

MR EE SAIYED for Petitioner

Mr. d.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. E.E. Saiyed for the petitioner and learned A.G.P. Mr. D.P. Joshi for the respondents.

The detention order dated 16-1-1999 passed by the respondent no.2-Commissioner of Police, Ahmedabad City against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", the translation of which is produced at Annexure "B" alongwith the original indicate that about seven Prohibition Cases are registered against the petitioner in between 31-3-1998 to 1-1-1998. That except two cases, all other cases are pending investigation. That in each of the case countrymade liquor has been seized from the possession of the petitioner. The grounds further indicate that two witnesses on assurance of their annonymity have supplied information about the bootlegging activity of the petitioner vide their statements dated 18-12-1998 and 11-12-1998 respectively.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a bootlegger within the meaning of Section 2(b) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail and as such the subjective satisfaction having been vitiated, the impugned order is bad in law.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case, the penultimate paragraph of the grounds of detention disclose that the detaining authority has construed the fact that the petitioner has been released on bail in each of the case, and thereafter has contined his bootlegging acticvity, however, the

detaining authority has failed to consider the aspect as to why bail has not been opposed or cancellation claimed in pending cases against the petitioner. In that view of the matter, I am constrained to hold that the detaining authority having failed to consider the aspect of less drastic remedy of opposing and cancellation of bail without any reasonable explanation discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

9. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

10. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 11-1-1999 passed by the respondent no.2-Police Commissioner,Ahmedabad City against the petitioner is hereby quashed and set aside. The petitioner-detenu -Ashaben wd/o Mohansing Goresinh is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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